

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION NO.1303 OF 1999

CEAT Financial Services Ltd. ...Petitioners

Versus

M/s.Gemini Agritech Ltd. ...Respondents

.....

Ms.Vijaya Gaekwad i/b M/s.Manilal Kher Ambalal
& Co. for Petitioners.

None for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

JULY 22, 2005.

P.C.

1. Heard Counsel for the Petitioners. None appears for the Respondents though served. No reply has been filed on behalf of the Respondent Company to oppose this Petition. In that sense, assertions made in the Petition have remained uncontroverted.

2. From the averments in the Petition which

are supported by the documents on record, it is seen that two loan agreements were executed between the parties under which Petitioners offered to extend financial facility to the Respondent Company in the sum of Rs.25,00,000/- (Rupees Twenty-five Lakhs) and Rs.10,00,000/- (Rupees Ten Lakhs) respectively at the accrued interest rate of 36% per annum as late charges in case of delayed payment. The Respondent Company availed of the said facility and entire amount of Rs.35,00,000/- (Rupees Thirty-five lakhs) was disbursed to the Respondent Company. Post-dated cheques were issued by the Respondent Company which were, however, returned/dishonoured with remark 'insufficient funds'. Criminal action in relation to these dishonoured cheques is stated to be pending before the concerned Magistrate. The fact remains that inspite of repeated reminders, the Respondent Company did not discharge its obligation under the agreement either to refund the principal amount or the accrued interest thereon, which sum, on the date of filing of the present Petition is around Rs.1.07 crores. Petitioners, therefore, gave statutory notice to the Respondent Company, which

also remained unresponded. Eventually present Petition has been filed on 22nd November 1999. In spite of notice given to the Respondent Company before admission of the Petition, the Respondents did not choose to appear in the present proceedings. No reply was filed. Eventually, this Court proceeded to admit the Petition on 20th February 2000. The Petition has been duly advertised and published.

3. As mentioned earlier, the Respondents have not appeared nor filed any affidavit to oppose this Petition so as to counter the assertions made in the Petition. The claim of the Petitioners is acknowledged by the Respondents which is evident from the fact that the Respondents had issued post-dated cheques to the Petitioners. There are documents on record to support the claim of the Petitioners that the claim amount in this Petition has been acknowledged. No reply was sent to the statutory notice nor any reply has been filed in respect of the present Petition. In that sense, legal presumption arising against the Respondent Company has remained unrebutted.

4. In this view of the matter, the only course open to this Court is to allow the Petition in terms of prayer clause (a) with cost. Ordered accordingly.

A.M.KHANWILKAR, J.